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ABSTRACT

The interpreter in criminal cases generally has had a purely linguistic training with no difference from the education received by his colleague interpreters. The position of interpreters in criminal cases is vague and their role depends to a large extent on individual interpretation of officials involved in the criminal procedure. Improvements on the present situation are suggested to guarantee a specialized training of interpreters in criminal cases and earlier and more frequent contact with the accused and more competence for the interpreter in Court. (Author)

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INTERPRETER IN CRIMINAL CASES: ALLROUNDERS FIRST !

Summary of a lecture held by Arthur Frid[1] on November 30th, 1974 on the occasion of the Fall Meeting of the Dutch Society of Translators.

Abstract:

The interpreter in criminal cases generally has had a purely linguistic training with no difference from the education received by his colleague interpreters. The position of interpreters in criminal cases is vague and his role depends to a large extent on individual interpretation of officials involved in the criminal procedure. The author suggests improvements on the present situation guaranteeing a specialized training of interpreters in criminal cases and earlier and more frequent contact with the accused and more competence for the interpreter in Court.

Ladies and Gentlemen,

You are interpreters, translators or a combination of the two. As far as I understand, one could divide you into three categories: interpreters at conferences or congresses, conversational interpreters and interpreters in court. And you all have your own professional ethics and individual views on your jobs. You all consider yourselves more or less morally bound to the ten rules of the Codes of Honour of the Dutch Society of Translators. Yet you are individualists and creativity is not alien to you, but at the same time you have a "serving function" (at least according to the second rule of the Code of Honour).
In short, the interpreter/translator possesses a number of specific characteristics, which connects him with his colleagues and which equally makes him or her differ from each other. This mutual connection and diversity applies to each of you. So you have that in common.
Therefore, when I, as an outsider, as an interested layman, try to visualize the interpreter in criminal cases from a criminological point of view, it is in the first place my intention to give a concrete form to the role of this interpreter and in the interest of all those involved in the administration of justice, including the interpreter himself.

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I then exclude the interpreter in civil jurisdiction, because the situation in criminal cases can not be compared with any other lawsuit. Penal law means:

- a vertical, semi-inquisitorial character;
- strong interference in the personal interests of the accused/delinquent in connection with several sanctions, which (might) interfere with his personal integrity;
- rapidly changing views on purpose and effect of the whole criminal law;
- unexpected situations, more stress on the accused being the object of the investigation, and therefore, a more intensive need for assistance of interpreters;
- an equally strong need, though for other reasons, for the police and judicature to avoid extra barriers with respect to foreigners in cases of investigation.

On the other hand I am convinced, that part of the problems of the interpreter in criminal cases really are symptomatic for all interpreters, not only for interpreters in court, but also for interpreters and translators in general. A parallel indeed, which can (and will) be extended in many respects to other countries as well.

The interpreter in criminal cases has an essential place as an assistant between police or judicature and the accused, who cannot speak or understand the language of the country. However, it is hardly possible to find out about the role, task and position of the interpreter in criminal cases, mainly because one meets with so many meaningless statements in the legislation and jurisprudence, and with the almost complete silence in the specialist's literature. The assistance of an interpreter is only legally required during Court session. For the rest improvisation, coïncidence and individual insight reign supreme.

The Human Rights Convention, which was adopted in Rome November 4th, 1950 gives some directives to national legislations. Article 6, paragraph 3 states: "Everyone charged with a criminal offence has the following minumum rights: a. to be informed promptly, in a language which he understands and in detail of the nature and cause of the accusation against him; e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

These are the relevant principles of criminal jurisdiction from the Con-

vention of Rome, which should be implied in the criminal procedure. It seems to me, that this Convention is certainly satisfactory as a starting point to expand the rights of the accused for assistance of an interpreter including a number of procedural situations beyond Court, such as criminal investigation and prosecution. However, both the law and jurisprudence are rather restricted in this matter. Therefore, ladies and gentlemen, I would like to present my list of desiderata:

1. Regulations and guarantees for a compulsory specialization of the interpreter in criminal cases .
2. Regulations and guarantees for calling in the assistance of an interpreter in criminal cases in a very early stage of the criminal procedure (pooling of interpreters).
3. Greater competence for the interpreter in criminal cases which means far more than his present serving function as a translator.

It is only a matter of priorities chosen from a great number of un- or insufficiently regulated matters.

1. COMPULSORY SPECIALIZATION OF THE INTERPRETER IN CRIMINAL CASES

I would like to mention three reasons for this specialization.

a. The interpreter in criminal cases has had a language directed training and examinations, or he has been judged capable of being an interpreter in court for other reasons (anyway juridically irrelevant) e.g. a Chinese speaking Dutch fairly well.
b. The interpreter in criminal cases does highly specialized work. He acts in the field of law, of which criminal law is again a specialization. This requires a fair amount of knowledge and expertise regarding how to act, which completely differs from any other form of interpreting. These two considerations concern of course also other interpreters in court, at congresses or conversational interpreters. But that is not our subject.
c. The image of the interpreter in criminal cases has lost its incidental character. The number of foreigners, who work and live in the Netherlands, has increased considerably in the last twenty years.

In order to give some ideas of the present Dutch situation in criminality and nationality, I have listed some data from the most recent monthly

statistics of the Central Office of Statistics, dealing with this matter (August 1974).

> From 1963-1973 the number of foreigners suspected of crimes in the Netherlands increased from 2944 to 7441 (not including are 1376 stateless persons and 264 persons whose nationality could not be determined in 1972).
> Especially in 1971-1972 the increase was high. Whereas the number of foreigners suspected of crimes still was 3466 in 1967, in the following years this number increased from 3902 through 4139 to 6232 in 1971 and 7441 in 1972.
> The percentage of foreigners of the total number of all criminal cases increased in 10 years from 4.2% to 6.5%. In 1971-1972 they counted 88 nationalities: 27 European and 61 Non-European. With regard to the justiceables per nationality: with Europeans the following nationalities prevailed, sentenced or dismissed in 1972: 2297 Germans, 752 Italians, 608 Belgians, 442 French, 424 Turks, 266 Yugoslavs, 231 Spaniards, 205 English, 106 Austrians. With regard to Non-Europeans they counted 715 Moroccans, 362 Americans, 78 Algerians, 65 Tunisians, 47 Canadians, 44 Chinese, 27 Australians, 25 Israeli, 24 Persians. Mentioned figures of criminality only concern men, because the number of cases against foreign women is in general low per nationality. Nevertheless in 1972 140 German, 76 Belgian, 49 French, 42 American, 41 Yugoslavian, 25 Spanish and 24 Italian women found themselves up against the Dutch law.

Enough figures, ladies and gentlemen. However, they strengthen my opinion, that interpreters too should adapt themselves to a changing society in this time of increasing specialization. However, the question is how, to what extent and when should the interpreter study more deeply in relevance to the criminal procedure.
Therefore I suggest that specialization of the interpreter in criminal cases should be arranged for by means of a complementary juridical course.
On the basis of their various training systems it seems desirable to include a test or (state) examination after the general interpreters' course. However, this should be done before getting involved in criminal cases. Complete or partial compensation and dispensation can be handled individually when needed.

2. CALLING IN THE ASSISTANCE OF AN INTERPRETER IN CRIMINAL CASES IN A VERY EARLY STAGE OF THE CRIMINAL PROCEDURE

The time is over, that incidentally a teacher was called to translate

in Court. The local, often perfectly working procedures should now be integrated into an adequate legal system, according to article 6, paragraph 3 of the Convention of Rome. Earlier and more frequent assistance of interpreters in criminal cases is necessary.

Earlier assistance: for the realisation a parallel can be drawn with the in this country existing pool system of counsel for the suspects at the police-station. Free assistance of interpreters by right, automatically, for all suspects, who do not understand the vernacular. At any rate the interpreter's signature should be put under the official report drawn up by the police.
Nothing can prevent us, ladies and gentlemen, from introducing the pooling system of interpreters in Amsterdam and the rest of the Netherlands now. Individual initiatives by police, counsel or accused will then be superfluous.
As concerns the fees I suggest a shift-system and standard compensation (even if the interpreter is not effectively on duty) and not only an allowance for travel expenses but also for the time he is under way.

More frequent assistance: the counsel, interpreter, probation and parole officers, but also judicature themselves will have to improve this for the near future to come. The balancing of many other interests during the procedure where interpreter's assistance is absent or sparse, cannot be dealt with in full within this framework.

3. GREATER COMPETENCE FOR THE INTERPRETER IN CRIMINAL CASES THAN HIS PRESENT SERVING FUNCTION.

Une mer à boire. Harriet Nordbäck-Linder, member of the FIT council writes in "Att vara tolk" (To be an interpreter, Stockholm 1972) about the need of interpreters in court to be neutral on the one hand, and to be sympathetic with the accused on the other hand.
Peter Schilling, interpreter in Holland, subscribes to this opinion. However, he clearly distinguishes between the several stages of interpreting. At the police-station he will range himself on the side of his commissioner. He takes the side of the police; later on he considers himself impartial.
Dr. V. Petioki distinguishes the interpreter who is "nur ein Transformator, wenn auch ein überaus kompliziert fuktionierender Transformator"

and the interpreter, who "in der Funktion des Sprachrohrs eines anderen selbständige Person mit ethischer Verantwortlichkeit bleibt". Petioki himself chooses for the latter view.

This selection may seem slightly at random, but is fairly representative and even symptomatic of the fanciful picture of the position of today's interpreter in criminal cases. It is my personal view, ladies and gentlemen, that the interpreter should not assist the police OR judicature OR the accused, but he should have his own independent identity, so that he can act according to his own master opinion and initiative.

At present it is possible that among three interpreters, who all of them act to the best of their abilities, the following attitudes can occur: one neutral, the second on the side of the police, the third identifying himself with the suspect. As soon as possible this situation must be checked.

The interpreter in criminal cases is a specialist, an expert on communication who must try to distinguish his interpretative function from influencing factors or opinions.

In this respect I expect a favourable influence from a more extensive Code of Honour for interpreters in general. This Code should contain among other things:

A: General rules valid for all interpreters-translators;

B: Specific rules relating to the job of the interpreter apart from the translator.

C: Exceptional rules applicable in a number of specializations.

1) Mr. Frid is with the Criminological Institute of Amsterdam Free University. He is also Member of the workgroup of lawyers (Coornhert Liga) and interpreters (DST), which studies the position of interpreters in criminal cases.